REMARKS

In the final Office Action mailed November 30, 2006, the Examiner noted that claims 1-12 were pending and rejected claims 1-12. Claims 1 and 6-10 have been amended, no claims have been canceled, new 13 has been added and, thus, in view of the forgoing claims 1-13 remain pending for reconsideration which is requested. No new matter has been added. The Examiner's rejections are traversed below.

REJECTIONS under 35 U.S.C. § 103

Claims 1-12 stand rejected under 35 U.S.C. § 103(a) as obvious over Choquier, U.S. Patent No. 5,951,694 in view of Donaghue, U.S. Patent No. 6, 226, 377. Choquier is directed to a system of reconfiguring servers in to particular server groups depending on the need of the server group. Donaghue is directed to assigning a server to the highest priority transaction level that has a pending transaction. The Examiner states at pages 3 and 4 of the Office Action that:

> Choquier fails to teach the service server are grouped depending on quality levels of the rendered services into high, low and intermediate service groups. Donaghue teaches, in an analogous system, the service servers are grouped depending on the quality levels of the rendered service into high, low, and intermediate service groups (Donaghue teaches 1st, 2nd, and 3rd priority levels), wherein the intermediate group offers low level service during a normal time and **reassigning servers between the server groups based upon the load level** of the service. [Emphasis added]

Donaghue does not reassign servers between the server groups. Donaghue at column 3, lines 27-37 states:

> In contrast to conventional transaction processing systems that attempt to assign each newly-arrived transaction to a server, the facility of the present invention **assigns each newly-available server to a transaction**. Such assignment takes place each time a server becomes available, either when an existing server completes the processing of the last transaction that it was assigned to process, or when a new server arrives. The **assignment process involves "offering" use of the server for use by each priority level of applications in sequence**, from the highest priority level to the lowest priority level, until a priority level accepts use of the server. [Emphasis added]

Donaghue therefore discusses priority levels of transactions that need to be executed and assigns a server to that priority level for the length of the transaction. It does not teach about groups of service servers or reassigning service servers between service server groups. Donaghue, therefore does not teach or suggest "to define aplurality of groups of service servers depending on quality levels of rendered services," as in claim 1.

Further, claims 1 and 6-10 have been amended to recite the "wherein the service request with a high service level requirement is preferentially processed while still processing service requests of a low service level requirement." The amendment differentiating from Donaghue that discusses higher level transactions being processed to the detriment of lower level transactions that can be starved of processing power. See Fig. 4 of Donaghue.

Further, the final Office Action provides no motivation or suggestion to combine the teachings of Choquier and Donoghue as required by 35 U.S.C. § 103(a) and the M.P.E.P. § 706.02(j)(D), beyond the assertion that it would have been obvious *to modify the system and method of Choquier with the above teachings of Donaghue in order to more effectively utilize the resources and maintain service level agreements as suggest by Donaghue.* Whereas, Choquier discusses server groups and applying a server to a given group to achieve load balancing, Donoghue discusses a transaction based system that assigns a server to the highest-level transaction. Choquier states at column 2 lines 48-57 state:

> In accordance with a dynamic **load balancing** feature of the invention, when a user sends a request to open a service, the Gateway microcomputer that receives the request initially **identifies the application servers that are within the relevant service group**. The Gateway microcomputer then determines the current load of each application server in the service group, and applies a load balancing method to select an application server that is relatively lightly loaded. The service request is then passed to the selected application server for processing. [Emphasis added]

Whereas, Donoghue states "[i]n contrast to conventional transaction processing systems that attempt to assign each newly-arrived transaction to a server, the facility of the present invention assigns each newly-available server to a transaction." Column 3 lines 27-30. It would not have been obvious at the time of the invention, for one of ordinary skill in the art to combine the load balancing grouped based system of Choquier with the highest priority transaction based system of Donoghue.

The arguments as to claim 1 apply likewise to claims 6-10. For at least the reasons stated above, Choquier and Donoghue taken separately or in combination fail to teach or suggest the limitations of claims 1 and 6-10 and the claims dependent therefrom.

As to claim 5, Donaghue, for the reasons stated above, does not teach of intermediate server groups, only transactions of a given priority. Therefore, Choquier and Donoghue taken separately or in combination fail to teach or suggest the limitations of claim 5.

Withdrawal of the rejections is respectfully requested.

NEW CLAIM

Claim 13 is new. Support for claim 13 found in Figs 15 and 16 and page 6, line 16 through page 7, line 1 of the application. The prior art fails to teach or suggest a system where lower priority applications are not starved by maintaining a minimum amount of throughput.

SUMMARY

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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